

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Implementation of the Subscriber Carrier |) | |
| Selection Changes Provisions of the |) | CC Docket No. 94-129 |
| Telecommunications Act of 1996 |) | |
| |) | |
| Policies and Rules Concerning |) | |
| Unauthorized Changes of Consumers' |) | |
| Long Distance Carriers |) | |
| |) | |
| LEC Coalition Application for Review Regarding |) | |
| Carrier Change Rules |) | |

ORDER

Adopted: December 18, 2007

Released: January 4, 2008

By the Commission:

I. INTRODUCTION

1. This Order denies an Application for Review filed by a coalition of local exchange carriers ("LEC Petitioners") regarding the Commission's carrier change verification rules.¹ Specifically, the LEC Petitioners ask the Commission to reverse the Bureau's finding that certain carrier change actions violate section 64.1120(a)(2) of the Commission's rules, which prohibits executing carriers from re-verifying the submission of a change request by a submitting carrier or causing an unreasonable delay in the execution of a change.² As set forth below, we deny the LEC Petitioners' request.

¹ *Application for Review*, CC Docket No. 94-129, filed July 8, 2005 (*Application*). The coalition includes 3 Rivers Telephone Cooperative, Inc., Armstrong Telephone Company Maryland, Armstrong Telephone Company New York, Armstrong, Telephone Company North, Armstrong Telephone Company Northern Division, Armstrong Telephone Company Pennsylvania, Armstrong Telephone Company West Virginia, Calaveras Telephone Company, Inc., Chester Telephone Company, Chibardun Telephone Cooperative, Inc., Chickasaw Telephone Company, Citizens Telephone Company of Higginsville, Concord Telephone Company, CTC Telcom, Inc., Darien Telephone Company, DTC Communications, Egyptian Telephone Cooperative, Five Area Telephone, Hardy Telephone Company, Horry Telephone Cooperative, Inc., HTC Communications, Lackawaxen Telecommunications Services, Inc., Lockhart Telephone Co., Margaratville Telephone Company, Mid-Century Telephone Company, Mid-Rivers Telephone Cooperative, Nicholville Telephone Company, Inc., North Central Telephone Cooperative, Inc., North-Eastern Pennsylvania Telephone Company, Peoples Telephone Company, Poka Lambro Telephone Cooperative, Public Service Telephone Company, Ridgeway Telephone Co., Siskiyou Telephone Company, Smart City Telecom, Smithville Telephone Company, Stayton Cooperative Telephone Company, TEC Services, Inc., Trumansburg Telephone Company, Inc., United Telephone Company, Washington County Rural Telephone Cooperative, West Plains Telephone.

² See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Declaratory Ruling, 20 FCC Rcd 10599 (CGB 2005) (*Declaratory Ruling*); 47 C.F.R. § 64.1120(a)(2).

II. BACKGROUND

2. Section 258 of the Communications Act of 1934 (Act), as amended, prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ This practice, known as "slamming," distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. A "submitting carrier" is defined as any telecommunications carrier that (1) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed; and (2) seeks to provide retail services to the end-user subscriber.⁴ An "executing carrier" is defined as any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed.⁵ An executing carrier has actual physical responsibility for making the change to the subscriber's service.⁶ The Commission has ruled that submitting carriers should be responsible for verifying consumers' carrier change requests and, regardless of the solicitation method used, should employ one of four verification options: written letters of agency (LOAs), electronic authorization, Internet LOA or third party verification.⁷ Executing carriers may not take additional steps to verify the submitting carrier's initial verification of a change request, and may not otherwise cause an unreasonable delay in the execution of the change.⁸

3. In April 2004, MCI filed a series of individual informal complaints against the LEC Petitioners regarding the rejection of carrier change requests.⁹ MCI alleged that the LEC petitioners were unduly impeding the carrier change process, and were engaging in a form of additional verification of carrier changes submitted by MCI.¹⁰ Specifically, MCI asserted that the LEC Petitioners were rejecting MCI's carrier change submissions when information in the submissions differed from that in the LEC Petitioners' records.¹¹ On February 1, 2005, the LEC Petitioners filed a *Petition for Declaratory Ruling* in which they did not dispute these facts, but instead asked the Bureau to confirm that their actions did not

³ 47 U.S.C. § 258(a).

⁴ See 47 C.F.R. § 64.1100(a); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508, 1564-65, para. 92 (1998) (*Second Report and Order*).

⁵ 47 C.F.R. § 64.1100(b); *Second Report and Order*, 14 FCC Rcd at 1565-66, para. 94.

⁶ *Id.* The Commission also stated that, in the current environment, an IXC could also be an "executing carrier," e.g., if a facilities-based IXC resells service to a switchless reseller. See *Second Report and Order*, 14 FCC Rcd at 1566, para. 94.

⁷ See *Second Report and Order*, 14 FCC Rcd at 1567, para. 97; *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16000-06, paras. 6-18 (2000) (*Third Report and Order*).

⁸ 47 C.F.R. § 64.1120(a)(2).

⁹ See Informal Complaints filed by MCI, Inc. Against Various Local Exchange Carriers, File Nos. EB-04-MDIC 0003 to 0064 (filed Mar. 12, 2004). Since filing these complaints, MCI has not taken any further action at the Commission to pursue the matters complained of in those complaints, and they have been administratively closed. See 47 C.F.R. § 1.718, which requires the conversion of informal complaints to formal complaints within six months of the date of defendants' report to ensure that the formal complaints relate back to the filing date of the informal complaints for purposes of statute of limitations.

¹⁰ See *id.*

¹¹ See *id.*

violate the Commission's rules.¹² The Bureau denied the LEC Petitioner's request.¹³ On July 8, 2005, the LEC Petitioners filed an Application for Review of the Bureau's decision.¹⁴ AT&T Inc. ("AT&T"), Sprint Nextel Corporation ("Sprint") and Verizon Communications Inc. ("Verizon") filed oppositions to the LEC Petitioners' Application for Review.¹⁵ The Iowa Utilities Board ("IUB") and the National Association of State Utility Consumer Advocates ("NASUCA") commented in support of the LEC Petitioners.¹⁶

4. In their *Application*, the LEC Petitioners argue the Bureau misinterpreted the nature of the request made in their *Petition*, as well as the applicability of the Commission rule in question.¹⁷ The LEC Petitioners then set forth essentially the same arguments contained in their original *Petition*. Specifically, LEC Petitioners reiterate that their actions do not constitute "re-verification" in violation of section 64.1120(a)(2)¹⁸ and, in any case, that a LEC is obligated to its subscribers not to make IXC changes without a direct indication from persons on record with the LEC that the person requesting the IXC change is authorized to do so.¹⁹ The LEC Petitioners also contend that the Bureau improperly failed to consider the decision by the D.C. Circuit Court in *AT&T Corp. v. Federal Communications Commission*,²⁰ and that their practices do not, as was found by the Bureau in the *Declaratory Ruling*, result in *de facto* PIC freezes.²¹

III. DISCUSSION

5. Section 64.1120(a)(2) of the Commission's rules provides that "[a]n executing carrier shall not verify the submission of a change in the subscriber's selection of a telecommunications service received from a submitting carrier."²² We affirm that it is not permissible for an executing carrier to block a carrier change submission by a submitting carrier, based on the executing carrier's own finding that the customer's information does not match exactly the information in the executing carrier's records.

6. The Commission expressed concern that executing carriers could use the verification process as a means to delay or deny carrier change requests in order to benefit themselves or their affiliates.²³ While the Commission agreed that allowing executing carriers to re-verify carrier change

¹² *Petition for Declaratory Ruling*, CC Docket No. 94-129, filed February 1, 2005, by 3 Rivers Telephone Cooperative, et al (*Petition*).

¹³ *See Declaratory Ruling*.

¹⁴ *Application*; *see supra* note 1.

¹⁵ *See AT&T Comments*; *Sprint Comments*; *Verizon Comments*.

¹⁶ *See IUB Comments*; *NASUCA Comments*.

¹⁷ *Application* at 3.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 10-14.

²⁰ *Id.* at 5-8. *See AT&T Corp. v. Federal Communications Commission*, 323 F.3d 1081 (D.C. Cir. 2003) (*AT&T v. FCC*).

²¹ *Application* at 5-8. A preferred carrier freeze ("PIC freeze") prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. *See Second Report and Order*, 14 FCC Rcd at 1575, para. 112 n.348.

²² 47 C.F.R. § 64.1120(a)(2).

²³ *See Second Report and Order*, 14 FCC Rcd at 1568, para. 99 ("executing carriers...have both the incentive and ability to delay or deny carrier changes").

requests could, under certain circumstances, help deter slamming, it ultimately concluded that the anti-competitive effects of re-verification outweighed the potential benefits.²⁴

7. The LEC Petitioners contend that the Bureau mischaracterized their argument.²⁵ Rather, according to the LEC Petitioners, under general principles of agency law, an executing carrier simply has a much more limited obligation to its subscribers not to make changes to subscriber accounts without prior indication from the subscriber that the submitting carrier request was so authorized.²⁶ LEC Petitioners argue that their policies cannot be construed as “re-verification” since the customer is not involved.²⁷ The LEC Petitioners liken their actions to that of a clerk at a liquor store that asks a customer for identification as a condition of purchase.²⁸

8. We disagree with LEC Petitioners and find there is no material distinction between rejecting a carrier change request because of a determination that the customer is not authorized, and rejecting a change request because the LEC has determined that customer information does not match the LEC’s records.²⁹ As the Bureau emphasized in its *Declaratory Ruling*, and as commenters reiterate here, the Commission has already clearly defined the roles of the submitting and executing carrier in a carrier change request.³⁰ Specifically, in the course of verifying the subscriber’s intention to change long distance service, a *submitting* carrier’s independent, third-party verifier is required to elicit confirmation that the person contacted is authorized to make the change (that is, either the party or an agent of the party identified on the account).³¹ As to executing carriers, the Commission’s rules simply require “prompt execution of changes verified by a submitting carrier.”³² As stated in the *Declaratory Ruling*, the mere fact that the name(s) contained in the executing carrier’s LEC account information may differ from that of the contact person listed on the submitting carrier’s change request does not necessarily indicate a lack of authority or agency on the part of the person requesting the IXC change.³³ We find credible, and LEC Petitioners do not dispute, that “customers often authorize a spouse, a roommate, or other associate to act on their behalf,” or may use a different name for billing purposes, and this information may not reside in

²⁴ *See id.*

²⁵ *Application* at 3.

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ The LEC Petitioners state that the clerk in this instance is not making a determination of the customer’s age; instead, the clerk is merely requesting proof of the customer’s age. *See* LEC Petitioners Reply at 11-12.

²⁹ *See* AT&T Comments at 3. *See also* Verizon Comments at 4 (arguing that the executing carrier could, in fact, be seen as interfering with the agency relationship between the submitting IXC and its customer, since the IXC would be acting as the customer’s agent when submitting the carrier change request).

³⁰ *See Declaratory Ruling*, 20 FCC Rcd at 10601-02, para. 8. *See also* AT&T Comments at 2; Verizon Comments at 5-6.

³¹ *See supra* para. 2.

³² *Third Report and Order*, 15 FCC Rcd at 16022, para. 51.

³³ *Declaratory Ruling*, 20 FCC Rcd at 10602, para. 8. The Commission defined “subscriber” as “the party identified in the account records of a common carrier as responsible for payment of the telephone bill, any adult person authorized by such party to change telecommunications services or to charge services to an account, and any person contractually or otherwise lawfully authorized to represent such party.” *See Third Report and Order*, 15 FCC Rcd at 16020, para. 48. The Commission stated that the majority of commenters favored a broad definition of subscriber that would allow the customer of record to authorize others to make telecommunications decisions. *Id.* at 16019-20, para 47. No party sought reconsideration of the Commission’s decision in the *Third Report and Order* regarding the ability of a customer to authorize others to act on their behalf to make carrier changes.

the LEC's files.³⁴ We do not believe the LEC Petitioners' liquor store analogy is applicable to the actions at issue here. In the LEC Petitioners' purported analogy, the customer is directly requesting a product sold by that store. Here, an executing carrier seeks to block a transaction that has already occurred *between a customer and another carrier*.³⁵

9. The LEC Petitioners also argue that the Bureau erred when it failed to consider their arguments in light of *AT&T v. FCC*.³⁶ In that decision, the court found that the Commission could not require submitting carriers to obtain actual authorization from a subscriber for a carrier change.³⁷ Instead, the court found that Section 258 of the Act provides that carriers must comply only with "such verification *procedures* as the Commission shall prescribe (emphasis added)."³⁸ The court added that requiring actual authorization was tantamount to holding submitting carriers to a strict liability standard, but that no such standard was contained in section 258 of the Act.³⁹ The LEC Petitioners point to the court's statement that the customer's local exchange carrier "might be able to verify the subscriber's identity by consulting its own customer records," to support their proposition that they should not have to presume that any name submitted in connection with a carrier change order is authorized by the subscriber.⁴⁰ We disagree. In *AT&T v. FCC*, the court reviewed the Commission's enforcement action imposing a forfeiture against AT&T for slamming. That decision concerned only the obligations of a submitting carrier; it did not address the rights or obligations of LECs. The specific language cited by the LEC Petitioners occurs in the context of the court's explanation of why the Commission exceeded its statutory authority in creating an "actual authorization from the subscriber" requirement and enforcing it against AT&T.⁴¹

10. The Bureau cited several examples (provided by the LEC Petitioners) of situations in which a LEC could, under the Commission's rules, legitimately reject a submitting carrier's change request, such as when a customer is already subscribed to the submitting carrier, when a customer has a PIC freeze⁴² in place, or when PIC changes are not permitted (*e.g.*, certain college dormitory rooms).⁴³ The LEC Petitioners argue that rejection of a carrier change for the reasons at issue here cannot be disallowed if it is in fact permissible for a LEC to utilize its records when processing a carrier change request, as in the examples described above.⁴⁴ We disagree. We reiterate that carriers may access account information in the course of effectuating carrier changes, and we do not believe that, under the

³⁴ AT&T Comments at 4-5. *See also* Verizon Comments at 3 (very few customers actually provide carriers with lists (or update these lists) of people that are authorized to make changes to accounts).

³⁵ Allowing such re-verification would be more analogous to "authorizing GM to confirm each sale made by Ford before the sale can be finalized." *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration, 18 FCC Rcd 5099, 5106-07, para. 19 (2003) (*Third Order on Reconsideration*).

³⁶ *Application* at 5-6. *See also supra* note 18.

³⁷ *AT&T v. FCC*, 323 F.3d at 1087.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 1086.

⁴¹ *Id.* at 1086-87.

⁴² The Commission's preferred carrier change provisions give consumers the option to "freeze" their choice of telecommunications carrier such that they must then contact their LEC to lift the freeze before any carrier changes can be effectuated. *See* 47 C.F.R. § 64.1190.

⁴³ *Declaratory Ruling*, 20 FCC Rcd at 10602, para. 9.

⁴⁴ *Application* at 8.

limited circumstances described above, an executing carrier's return of a carrier change to the submitting carrier constitutes re-verification in violation of the Commission's rules.⁴⁵ Our objection to the LEC actions at issue here is not related to their consulting account information *per se* during the course of executing a carrier change.⁴⁶ Rather, it violates Commission rules for executing carriers to make an independent determination with respect to the ability of a person to authorize a carrier change based on such information.⁴⁷

11. Executing carriers have means (other than re-verification) of protecting their customers that do not interfere with competition or undermine consumer choice.⁴⁸ Executing carriers can, for example, alert customers to preferred carrier changes, such as by highlighting changes to customers' accounts in customer billings, and can offer a preferred carrier freeze option to customers who are concerned about slamming.⁴⁹ However, as the Commission expressed in the past, re-verification by executing carriers could function as a *de facto* preferred carrier freeze in situations where a subscriber has not requested such a freeze.⁵⁰ The Commission emphasized that the imposition of a preferred carrier freeze must be authorized by the consumer to minimize any anticompetitive effects and to maintain flexibility for consumers.⁵¹ While preferred carrier freezes can provide consumers with extra protection from slamming, freezes by their very nature impose additional burdens on subscribers, and as such should only be enacted as a result of consumer choice.⁵² In the *Declaratory Ruling*, the Bureau reiterated this concern with respect to the LEC Petitioners' actions.⁵³ The LEC actions at issue here serve to restrict consumer control by eliminating the consumer's ability to designate someone (such as a spouse) as authorized to change telecommunications service without first contacting the local carrier, thereby increasing the ability of the executing carrier to act in an anti-competitive manner.⁵⁴ Endorsement of the LEC Petitioners' policies would result in inconvenience and delays for customers.⁵⁵ We continue to believe that the actions of the LEC Petitioners can, and do, result in *de facto* preferred carrier freezes where the customer has not requested such a freeze.

⁴⁵ *Declaratory Ruling*, 20 FCC Rcd at 10602, para. 9.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *See Second Report and Order*, 14 FCC Rcd at 1568-69, para. 100.

⁴⁹ *See id.*

⁵⁰ *See id.* A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. *Id.* at 1574, para. 112 n.348. *But see Application* at 7-8 (denying that the actions at issue result in a *de facto* PIC freeze).

⁵¹ *See Second Report and Order*, 14 FCC Rcd at 1569, para. 100.

⁵² *See id.*

⁵³ *Declaratory Ruling*, 20 FCC Rcd at 10601-02, paras. 5-9.

⁵⁴ *See id.* AT&T notes that, in general, even after an IXC reconfirms the accuracy of a carrier change order rejected by a LEC for any of the reasons at issue here, the change order is once again rejected by the LEC for the same reason(s). AT&T states that the customer must then call the LEC to confirm that the change is authorized, just as if a PIC freeze was on the account. Sprint Nextel adds that it seems highly unlikely that an unauthorized person would go to the time and effort of contacting the LEC to lift a freeze, and would have the information necessary (such as the subscriber's date of birth or social security number) to do so. *See AT&T Comments* at 4-5; *Sprint Comments* at 4.

⁵⁵ *Declaratory Ruling*, 20 FCC Rcd at 10601-02, paras. 5-9.

12. Finally, we note that IUB and NASUCA commented in support of the LEC Petitioners.⁵⁶ While we decline to grant the LEC Petitioners' request to reverse the Bureau's finding in the *Declaratory Ruling*, we recognize that *state* authorities may have verification requirements for matters within their jurisdiction that are stricter than those of the Commission. As the Commission recognized in the *Third Report and Order*, states have valuable insight into the slamming problems experienced by consumers in their respective locales.⁵⁷ Accordingly, the Commission declined to require that "states . . . limit their verification requirements so that they are no more stringent than those promulgated by this Commission."⁵⁸ As was noted in the *Declaratory Ruling*, our decision here concerns the question of permissible actions by private companies, not actions by a state regulatory agency.⁵⁹

IV. PROCEDURAL MATTERS

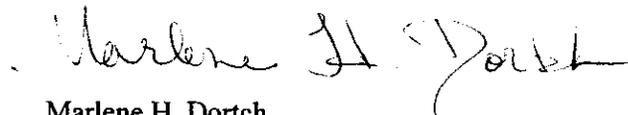
13. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Format at <http://www.fcc.gov/cgb/policy>.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and 258, and sections 1.115 and 64.1120(a)(2) of the Commission Rules, 47 C.F.R. §§ 1.115 and 64.1120(a)(2), this *Order* IS ADOPTED.

15. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), and 258 of the Communications Act, of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and 258, and sections 1.115 and 64.1120(a)(2) of the Commission Rules, 47 C.F.R. §§ 1.115 and 64.1120(a)(2), the LEC Petitioners' Application for Review filed in CC Docket 94-129 on July 8, 2005, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁵⁶ See IUB Comments; NASUCA Comments.

⁵⁷ *Third Report and Order*, 15 FCC Rcd at 16036, para. 87.

⁵⁸ *Id.* We note that in the *Third Order on Reconsideration*, the Commission denied WorldCom's request for clarification that, when determining whether a carrier change was authorized, the states must use the Commission's definition of subscriber. See *Third Order on Reconsideration*.

⁵⁹ A state regulatory authority, for example, could put in place requirements that address our concerns with LEC re-verification.